

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

ROBERT P. SLAGAN	:	CIVIL ACTION
	:	
	:	
v.	:	
	:	
JOHN WHITMAN & ASSOCIATES,	:	
ET AL.	:	NO. 97-3961

M E M O R A N D U M

Padova, J.

September 9, 1997

Plaintiff Robert P. Slagan ("Plaintiff") brings this action against his former employer to recover severance benefits that Plaintiff contends are due him pursuant to the terms of a severance clause contained in his employment contract. Before the Court is Plaintiff's Motion for Summary Judgment on his claim for severance benefits. For the reasons that follow, Plaintiff's Motion is DENIED.

I. FACTS

The following facts are undisputed. Plaintiff was employed by John Whitman & Associates, traded as The Whitman Group ("Whitman")¹, as its vice-president for finance, beginning on March 1, 1993. Affidavit of Mary Knapp at ¶ 3, filed in support of Defendants' Opposition to Plaintiff's Motion for Summary

¹Whitman is a geriatric health care consulting and management firm with over 80 employees. Affidavit of Mary Knapp at ¶ 2.

Judgment. Plaintiff reported only to John Whitman, Chairman and CEO of The Whitman Group, and Mary Knapp, President of the Whitman Group, and as such, was a member of Whitman's management team. Id. at 5.

After Plaintiff accepted Whitman's offer of employment, he was sent a letter dated January 19, 1993 from Mary Knapp on behalf of Whitman, a copy of which is attached as Exhibit A to Plaintiff's Complaint. This letter provides as follows:

"This letter serves to confirm our mutual understanding of the terms of your employment and supersedes in all respects the terms of our similar letters of October 19, 1992 and January 8, 1993. More detailed information regarding employee benefits, rights and obligations is available in the TWG [The Whitman Group] Employee Handbook, which is currently undergoing revision with respect to our Section 125 cafeteria benefits plan. A copy of the Employee Handbook in its current form has been included with this letter."

The letter further provides as follows:

"In the event of employment termination (other than voluntary termination by you or as a result of death or disability); corporate liquidation or dissolve; bankruptcy filing; merger; or sale of the firm by the current owners, you will be entitled to severance pay equal to your annual

salary stated in the preceeding (sic) paragraph, to be paid in equal monthly installments over a twelve month period without withholdings for taxes or other deductions."

Plaintiff also received a copy of Whitman's Employee Handbook in January 1994, which is attached as Exhibit A to the Knapp Affidavit. Knapp Affidavit at ¶ 26. In February 1997, he received a copy of Whitman's revised Employee Handbook, which is attached as Exhibit B to the Knapp Affidavit. Id. at ¶¶ 27-28.

Defendants terminated Plaintiff on June 3, 1997. Id. at ¶ 18. Plaintiff's termination was precipitated by reports that Mary Knapp and John Whitman had received that Plaintiff was sexually harassing female employees and that he had brought guns and knives into the Whitman workplace. Knapp Affidavit at ¶¶ 6-10; Affidavit of John Whitman at ¶¶ 2-5. At the time of his termination, Plaintiff's annual salary was \$98,578.83. Plaintiff's Complaint, Exhibit B, March 24, 1997 letter from Knapp to Slagan; Defendants' Answer at ¶ 15. Defendants have refused to pay severance benefits to Plaintiff. Defendants' Answer at ¶ 14.

II. LEGAL STANDARD

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, show that there is no genuine issue as to any material fact and that the

moving party is entitled to judgment as a matter of law." Fed.R.Civ.P. 56(c). An issue is "genuine" only if there is sufficient evidence with which a reasonable jury could find for the non-moving party. Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248, 106 S.Ct. 2505, 2510 (1986). Furthermore, bearing in mind that all uncertainties are to be resolved in favor of the nonmoving party, a factual dispute is only "material" if it might affect the outcome of the case. Id.

III. DISCUSSION

In his Motion for Summary Judgment, Plaintiff argues that the severance provision contained in the January 19, 1993 letter agreement clearly and unambiguously provides that in the event of the termination of Plaintiff's employment, Defendants could only deny paying Plaintiff severance benefits in the event of voluntary termination by Plaintiff or Plaintiff's death or disability. Because none of the exceptions to the severance pay provision exists, Plaintiff contends that he is entitled to summary judgment on his claim for severance benefits.

Defendants argue that Plaintiff breached his employment contract, certain terms of which were expressly set forth in the January 19, 1993 letter agreement and Whitman's Employee Handbook and other terms of which were implied at law. Defendants contend that issues of fact exist as to whether Plaintiff's breach of his employment contract constitutes a material breach, thereby

relieving Whitman of any contractual obligation it had to pay severance benefits to Plaintiff. Defendants argue that because of the existence of this factual dispute, summary judgment cannot be entered in favor of Plaintiff.

The Court will address below the parties' arguments as well as Pennsylvania's Wage Payment and Collection Law, upon which Plaintiff's Complaint is based.

A. Pennsylvania's Wage Payment and Collection Law

Plaintiff's Complaint contains one count brought under Pennsylvania's Wage Payment and Collection Law ("WPCL"), 43 P.S. § 260.1, et seq.² Whether severance pay is called "separation pay" or "guaranteed pay," it is defined as a "fringe benefit or wage supplement." 43 P.S. § 260.2a; Bowers v. NETI Technologies, Inc., 690 F.Supp. 349, 352 (E.D. Pa. 1988). A "fringe benefit or wage supplement" comes within the meaning of "wages" as defined in the WPCL. Id. The WPCL defines "employer" to include officers of a corporation, such as Defendants John Whitman and Mary Knapp. 43 P.S. § 260.2a.

The WPCL does not establish any substantive rights; it just provides a statutory remedy for an employee when the employer breaches a contractual obligation to pay earned wages. Weldon v.

²The basis for this Court's jurisdiction is diversity of citizenship pursuant to 28 U.S.C. § 1332. Therefore, Pennsylvania law is controlling. Erie Railroad Co. v. Tompkins, 304 U.S. 64, 58 S.Ct. 817 (1938).

Kraft, Inc., 896 F.2d 793, 801 (3rd Cir. 1990). "The contract between the parties governs in determining whether specific wages are earned." Id. Therefore, the employment agreement between Plaintiff and Whitman controls in determining whether severance pay is due to Plaintiff.

B. The Express Terms of Plaintiff's Employment Contract

The threshold legal question before the Court is whether Plaintiff's employment contract consisted solely of the January 19, 1993 letter, as Plaintiff argues, or whether the express terms of Plaintiff's employment contract consisted of those included in the January 19, 1993 letter as well as the rights and obligations set forth in Whitman's Employee Handbook.³

³Defendants argue that Plaintiff breached the provisions of the Employee Handbook pertaining to sexual harassment and weapons in the workplace. The Employee Handbook's provision on sexual harassment provides as follows:

"It is our firm policy to prohibit sexual harassment of any employee by another employee or a manager. . . . While it is not easy to define precisely what sexual harassment is, it certainly includes unwelcome sexual advances, requests for sexual favors and/or verbal or physical conduct of a sexual nature including, but not limited to, drawings, pictures, jokes, teasing, uninvited touching or other sexually-related comments. . . . Sexual harassment of an employee will not be tolerated. Violations of this policy may result in disciplinary action, up to and including discharge."

The Employee Handbook also contains the following general provision on standards of conduct:

"Each employee has an obligation to observe and follow the company's policies and to maintain proper standards of conduct at all times. If an individual's behavior interferes with the orderly and efficient operation of a department, corrective disciplinary action will be taken. . . . The following conduct may result in discipline up to and including discharge: flagrant misconduct; violations of the

An employer can create a legally binding contract with its employees via an employee handbook. Martin v. Capital Cities Media, Inc., 354 Pa.Super. 199, 511 A.2d 830, 841 (1986).

Whether Whitman's Employee Handbook contains terms of Plaintiff's employment contract is a question of law for the Court to determine. Ruzicki v. Catholic Cemeteries Ass'n, 416 Pa.Super. 37, 610 A.2d 495, 497 (1992). The Court "interprets the handbook to discern whether it contains evidence of the employer's intention to be legally bound." Martin v. Capital Cities Media, Inc., 511 A.2d at 841. The standard for determining this issue was set forth in Martin v. Capital Cities Media as follows: "A reasonable employee may be presumed to regard such handbooks as having legally binding contractual significance when the handbook, or oral representations about the handbook, in some way clearly state that it is to have such effect." 511 A.2d at 841-42.

At this juncture in the proceedings, the Court cannot find as a matter of law that Whitman's Employee Handbook does not

company's policies or safety rules; insubordination; poor attendance; possession, use or sale of alcohol or controlled substances on work premises or during work hours; poor performance; harassment or disrespect toward fellow employees, visitors or other members of the public. These examples are not all inclusive."

The revised version of the Employee Handbook given to Plaintiff in February 1997 added the following to the list of prohibited behaviors: "unauthorized possession, use or sale of weapons, firearms or explosives on work premises."

contain terms of Plaintiff's employment contract.⁴ In fact, there is strong evidence that Plaintiff's employment contract is comprised of both the September 19, 1993 letter agreement and Whitman's Employee Handbook. This is not a case where an employee was simply handed a copy of an employee handbook without any representations by the employer as to the handbook's significance. Rather, Plaintiff was given a copy of Whitman's Employee Handbook along with September 19, 1993 letter agreement, which contained the express representation by Whitman that "more detailed information regarding employee benefits, rights and obligations is available in the TWG [The Whitman Group] Employee Handbook." (Emphasis added).

This representation by Whitman is evidence of Whitman's intent that the Employee Handbook was to have legally binding significance. There may be additional evidence relating to this issue that has not been presented to the Court in the context of Plaintiff's Motion. Because intent is a fact-sensitive issue and

⁴Plaintiff argues that certain language included in the preface to the Employee Handbook demonstrates that the Handbook was not intended to create binding terms of Plaintiff's employment. The Court disagrees. The first provision cited by Plaintiff serves only to reaffirm the at-will nature of employment for Whitman's employees. The term "at-will" refers only to the fact that either the employee or the employer has the right to end the term of employment at will. The term "at-will" does not mean that there are no obligations or conditions of employment. The second provision cited by Plaintiff merely states that an employment agreement between Whitman and an employee may supersede the terms of the Employee Handbook.

because the Court may not have all of the relevant evidence before it at this time, the Court will defer ruling on whether the Employee Handbook was part of Plaintiff's employment contract. The Court does not need to reach this issue to decide Plaintiff's Motion for Summary Judgment because, as more fully discussed below, the Court finds that disputed issues of fact exist as to whether Plaintiff breached a term of his employment contract implied at law, and if so, whether the breach was material or not.

C. The Implied Terms of Plaintiff's Employment Contract

The general duty of good faith and fair dealing in the performance of a contract is found in Restatement (Second) of Contracts § 205, which has been adopted in Pennsylvania. Creeger Brick & Bldg. Supply Inc. v. Mid-State Bank and Trust Co., 385 Pa.Super. 30, 560 A.2d 151, 153 (1989); Baker v. Lafayette College, 350 Pa.Super.68, 504 A.2d 247, 255 (1987), aff'd, 516 Pa. 291, 532 A.2d 399 (1987). Section 205 of the Restatement (Second) of Contracts provides that "[e]very contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement." Creeger Brick & Bldg. Supply Inc. v. Mid-State Bank and Trust Co., 560 A.2d at 153. The duty of good faith and fair dealing has been defined as "[h]onesty in fact in the conduct or transaction concerned." Id., citing Restatement (Second) of Contracts § 705, Comment a. The duty of

good faith and fair dealing arises under the law of contracts.

Id.

As explained in Somers v. Somers, 418 Pa.Super. 131, 613 A.2d 1211 (1992),

"[t]he obligation to act in good faith in the performance of contractual duties varies somewhat with the context (citations omitted) and a complete catalogue of types of bad faith is impossible, but it is possible to recognize certain strains of bad faith which include: evasion of the spirit of the bargain, lack of diligence and slacking off, willful rendering of imperfect performance, abuse of a power to specify terms, and interference with or failure to cooperate in the other party's performance."

613 A.2d at 1213, citing Restatement (Second) of Contracts, § 205(d). The duty of good faith and fair dealing applies where, as here, the contract at issue is an employment contract. Id. at 1213; Jacobs v. Kraft Cheese Co., 310 Pa. 75, 164 A. 774 (1933) (where an employment contract provides that the employee's continued employment was conditioned on producing a satisfactory cream cheese, the employer had an obligation to make an honest and good faith effort to sell the product).

In addition to the duty of good faith and fair dealing, Pennsylvania law recognizes a contract doctrine called the "doctrine of necessary implication," which imposes a similar

requirement of good faith. Somers v. Somers, 613 A.2d at 1214.

That doctrine has been described as follows:

"`In the absence of an express provision, the law will imply an agreement by the parties to a contract to do and perform those things that according to reason and justice they should do in order to carry out the purpose for which the contract was made and to refrain from doing anything that would destroy or injure the other party's right to receive the fruits of the contract.'"

Slater v. Pearle Vision Center, 546 A.2d at 679, quoting Frickert v. Deiter Bros. Fuel Co., Inc., 464 Pa. 596, 347 A.2d 701 (1975) (Pomeroy, J., concurring). Therefore, where a term of a contract is contemplated by the parties at the time of contracting or is necessary to carry out the intention of the parties, a court can imply the term, even where the express terms of the contract are unambiguous. Slater v. Pearle Vision Center, Inc., 376 Pa.Super. 580, 546 A.2d 676, 679 (1988)(where failure of a tenant to occupy a store in a shopping center damaged the business of the shopping center, court implied the requirement that the tenant occupy the store even though the lease did not contain an express term requiring occupancy).

Defendants have submitted evidence that Plaintiff breached

his employment contract by sexually harassing Whitman's female employees and by bringing weapons into Whitman's workplace. Affidavits of Jane McDonnell and Denise O'Donnell, filed in support of Defendants' Opposition to Plaintiff's Motion. Although in his Reply, Plaintiff argues that the evidence submitted by Defendants is not true, Plaintiff did not submit any evidence to the Court to counter Defendants' affidavits. Plaintiff took the position that the grounds for his termination were irrelevant to the Court's determination of Plaintiff's Motion. Plaintiff's Reply at 2 n.1. For this reason, the Court does not have a complete evidentiary record before it.

This incomplete record, however, does not prevent the Court from determining, as a matter of law, that Plaintiff's employment contract contained the implied term that he would act in good faith. Whether under the Restatement's implied duty of good faith performance of a contract or the doctrine of necessary implication,⁵ the Court finds that Plaintiff's employment contract contained the implied term that his conduct would be lawful. It is without question that it is a violation of both Federal and Pennsylvania law to sexually harass another employee

⁵Defendants also argue that Plaintiff violated the duty of loyalty that he owed to Whitman, as his employer. In Fidelity Fund, Inc. v. DiSanto, 347 Pa.Super. 112, 500 A.2d 431 (1985), the court held that a car salesman was not entitled to recover sales commissions earned prior to termination because of his intentional, material breach of the implied duty of loyalty he owed his employer.

in the workplace. The Civil Rights Act of 1964 (Title VII), 42 U.S.C. § 2000e-2; Pennsylvania Human Relations Act, 43 P.S. §§ 951-963. Therefore, the Court finds that Plaintiff's employment contract contained the specific implied term that he would not sexually harass other Whitman employees.

There may also be circumstances where bringing a weapon into workplace may violate the law (e.g., if a gun was not licensed, if a weapon was used to threaten another individual). However, there currently is no evidence before the Court that a violation of law arguably occurred because Plaintiff brought a gun into work. In fact, it is not clear from the O'Donnell Affidavit whether Plaintiff brought a gun into work or whether he just talked with Ms. O'Donnell about showing her his "new toy," which she assumed was a gun. Because of the scant evidence before the Court on this issue, it is not possible at this juncture for the Court to find that an implied term of Plaintiff's employment contract was that he was prohibited from bringing weapons into the workplace.

D. Genuine Issues of Fact Exist as to Whether Plaintiff Breached His Employment Contract and Whether the Breach was Material

Whether Plaintiff engaged in unlawful conduct, thereby breaching the requirement of good faith imposed by both the duty of good faith and fair dealing and the doctrine of necessary

implication, is a factual question for the trier of fact to determine. At trial, the parties will have the opportunity to be fully heard on the issue of whether Plaintiff breached his employment contract.

Genuine issues of fact also exist as to whether Plaintiff's breach, if any, constitutes a material breach. Whether a breach of contract constitutes a material breach is a question of fact. Forest City Grant Liberty Associates v. Genro II, Inc., 438 Pa.Super. 553, 652 A.2d 948, 951 (1995). Under Pennsylvania law, when a party materially breaches a contract, the non-breaching party is not required to fulfill its duties under the contract. Oak Ridge Const. Co. v. Tolley, 351 Pa.Super. 32, 504 A.2d 1343, 1348 (1985)("If the breach constitutes a material failure of performance, the non-breaching party is discharged from all liability under the contract."); Ott v. Buehler Lumber Co., 373 Pa.Super. 515, 541 A.2d 1143, 1145 (1988)("[A] party who has materially breached a contract may not complain if the other party refuses to perform his obligations under the contract.").

In summary, the Court finds that genuine issues of fact exist as to whether Whitman's Employee Handbook was a part of Plaintiff's employment contract, whether Plaintiff breached the implied duty not to violate the law, and whether Plaintiff's breach, if any, was material, thereby relieving Whitman of its obligation to pay Plaintiff severance benefits. For these

reasons, Plaintiff's Motion for Summary Judgment is denied.

An appropriate Order follows.